



House of Representatives

General Assembly

File No. 90

January Session, 2007

Substitute House Bill No. 7073

House of Representatives, March 20, 2007

The Committee on Banks reported through REP. BARRY of the 12th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT PROTECTING CONSUMERS' PRIVACY IN MORTGAGE APPLICATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-41 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 As used in sections 36a-41 to 36a-45, inclusive, as amended by this
4 act:

5 (1) "Financial institution" means a bank, Connecticut credit union,
6 federal credit union, an out-of-state bank that maintains a branch in
7 this state and an out-of-state credit union that maintains an office in
8 this state.

9 (2) "Financial records" means any original or any copy, whether
10 physically or electronically retained, of: (A) A document granting
11 signature authority over a deposit account or a share account with a
12 financial institution; (B) a statement, ledger card or other record on any

13 deposit account or share account with a financial institution which
14 shows each transaction in or with respect to that account; (C) any
15 check, draft or money order drawn on a financial institution or issued
16 and payable by such an institution; or (D) any item, other than an
17 institutional or periodic charge, made pursuant to any agreement by a
18 financial institution and a customer which constitutes a debit or credit
19 to that person's deposit account or share account with such financial
20 institution if the item is not included in subparagraph (C) of this
21 subdivision.

22 (3) "Mortgage trigger lead" means a consumer report obtained
23 pursuant to Section 604 (c)(1)(B) of the federal Fair Credit Reporting
24 Act, 15 USC 1681b, where the issuance of the report is triggered by an
25 inquiry made with a consumer reporting agency in response to an
26 application for credit. The term does not include a report obtained by a
27 lender that holds or services existing indebtedness of the applicant
28 who is the subject of the report.

29 Sec. 2. Section 36a-42 of the general statutes is repealed and the
30 following is substituted in lieu thereof (*Effective October 1, 2007*):

31 (a) A financial institution may not disclose to any person, except to
32 the customer or the customer's duly authorized agent, any financial
33 records relating to such customer unless the customer has authorized
34 disclosure to such person or the financial records are disclosed in
35 response to (1) a certificate signed by the Commissioner of
36 Administrative Services or the Commissioner of Social Services
37 pursuant to the provisions of section 17b-137, (2) a lawful subpoena,
38 summons, warrant or court order as provided in section 36a-43, (3)
39 interrogatories by a judgment creditor or a demand by a levying
40 officer as provided in sections 52-351b and 52-356a, (4) a certificate
41 issued by a medical provider or its attorney under subsection (b) of
42 section 17b-124, provided nothing in this subsection shall require the
43 provider or its attorney to furnish to the financial institution any
44 application for medical assistance filed pursuant to an agreement with
45 the IV-D agency under subsection (c) of section 17b-137, (5) a certificate

46 signed by the Commissioner of Veterans' Affairs pursuant to section
47 27-117, or (6) the consent of an elderly person or the representative of
48 such elderly person provided to a person, department, agency or
49 commission pursuant to section 17b-454, provided the financial
50 institution shall have no obligation to determine the capacity of such
51 elderly person or the representative of such elderly person to provide
52 such consent.

53 (b) No first mortgage broker or mortgage lender, as defined in
54 section 36a-485, and no secondary mortgage broker or mortgage
55 lender, as defined in section 36a-510, shall engage in any unfair or
56 deceptive practice in soliciting an application for a loan or a line of
57 credit that would be secured by residential real property located in this
58 state when such solicitation is based, in whole or part, on information
59 contained in a mortgage trigger lead. For the purposes of this
60 subsection, "unfair or deceptive practice" means (1) the failure to
61 clearly and conspicuously state in the initial phase of the solicitation
62 that the solicitor is not affiliated with the lender or broker with which
63 the consumer initially applied, (2) the failure to clearly and
64 conspicuously state in the initial phase of the solicitation that the
65 solicitation is based on personal information about the consumer that
66 was purchased, directly or indirectly, from a consumer reporting
67 agency without the knowledge or permission of the lender or broker
68 with which the consumer initially applied, (3) the failure in the initial
69 solicitation to comply with the provisions of the federal Fair Credit
70 Reporting Act relating to prescreening solicitations that use consumer
71 reports, including the requirement to make a firm offer of credit to the
72 consumer, or (4) knowingly or negligently using information from a
73 mortgage trigger lead (A) to solicit consumers who have opted out of
74 prescreened offers of credit under the federal Fair Credit Reporting
75 Act, or (B) to place telephone calls to consumers who have placed their
76 contact information on a federal or state Do Not Call list.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2007</i>	36a-41
Sec. 2	<i>October 1, 2007</i>	36a-42

BA *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Banking Dept.	BF - Revenue Gain	Potential Minimal	Potential Minimal

Note: BF=Banking Fund

Municipal Impact: None

Explanation

The bill prohibits use of consumer credit information by first mortgage brokers or mortgage lenders. A potential minimal revenue gain could be experienced, since violations of this bill are an unfair trade practice. In FY 06, \$81,600 was collected in fines and penalties for all types of mortgage loan related activities.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations, which is unknown at this time.

OLR Bill Analysis**sHB 7073*****AN ACT PROTECTING CONSUMERS' PRIVACY IN MORTGAGE APPLICATIONS*****SUMMARY:**

This bill prohibits lenders and brokers of first and second mortgages from engaging in any unfair or deceptive practice, as defined in the bill, when soliciting a mortgage or home equity loan secured by residential property in Connecticut if the solicitation is based in any way on a mortgage trigger lead. Under current law, the banking commissioner has the right to suspend, revoke, or refuse to renew a license if he finds that the licensee violated the banking statutes. He may also seek injunctive relief; impose civil penalties; and issue cease and desist orders when he suspects someone is violating, is about to violate, or has violated a law under his jurisdiction.

The bill defines a "mortgage trigger lead" as a consumer report that is (1) obtained in accordance with the provisions of the federal Fair Credit Reporting Act (FCRA) that govern the issuance of consumer reports when the transaction is not initiated by the consumer and (2) issued as a result of an inquiry with a consumer reporting agency (CRA) in connection with a consumer's application for credit. The bill excludes from the definition of mortgage trigger lead, a consumer report obtained by a lender that holds or services that consumer's existing debt.

EFFECTIVE DATE: October 1, 2007

UNFAIR OR DECEPTIVE PRACTICES

The bill defines "unfair" and "deceptive" to include the failure to clearly and conspicuously state in the initial phase of the solicitation that (1) the solicitor is not affiliated with the lender or broker with

which the consumer initially applied and (2) the solicitation is based on information about the consumer purchased from a CRA without the initial lender or broker's permission or knowledge. The term also includes the failure to comply with FCRA's provisions on pre-screened offers of credit. Finally, it includes knowingly or negligently by information from a mortgage trigger lead to solicit consumers who have, in accordance with FCRA, opted-out of receiving pre-screened offers of credit or who are on the federal or state "Do Not Call" list.

EFFECTIVE DATE: October 1, 2007

BACKGROUND

Fair Credit Reporting Act

FCRA promotes the accuracy, fairness, and privacy of information in the files of CRAs. It allows CRAs to issue "consumer reports" in a number of circumstances, but contains special provisions for situations where the consumer does not initiate the transaction (i.e., for unsolicited pre-screened offers). Among other things, FCRA prohibits an agency from furnishing a consumer report in connection with any credit or insurance transaction not initiated by the consumer unless:

1. the consumer authorizes it or
2. the transaction consists of a "firm offer" of credit or insurance, the CRA gives consumers an opportunity to be excluded from such pre-screened lists that the agency provides without the consumer's consent, and the consumer has not exercised his right to be excluded.

The law also places disclosure duties on people who use the reports to solicit consumers. They must accompany each written solicitation with a clear and conspicuous statement that:

1. information in the consumer's credit report was used;
2. the consumer received the offer of credit or insurance because he satisfied the criteria for creditworthiness or insurability

under which he was selected;

3. if applicable, the credit or insurance offer may be denied if, after the consumer responds, he does not meet the selection or other applicable criteria or does not furnish any required collateral; and
4. the consumer has a right to prohibit information in his file at the agency from being used in any transaction not initiated by him and can exercise this right by writing to a specific address or toll-free number.

The law does not address how the disclosures should be made for telephone solicitations.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/06/2007)